



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

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Secretary's Order No. 2006-A-0016

**Re: Approval of Final Plan of Remedial Action for the Justison Landing
Development Project (DNREC Project Nos. 1090, 1040, 1055) in the City of
Wilmington**

Date of Issuance: March 30, 2006

Effective Date: March 30, 2006

Under the authority granted the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") in *7 Del. C. Chapters 60 and 91*, the following findings, reasons and conclusions are entered as an Order of the Secretary.

This Order considers the Department's March 1, 2006, Proposed Plan of Remedial Action for the Justison Landing Redevelopment Project ("Site"). The Department's experts within the Site Investigation and Restoration Branch ("SIRB") of the Division of Air and Waste Management ("DAWM") prepared the Proposed Plan pursuant the Brownfield Development program, as authorized by the Delaware Hazardous Substance Cleanup Act ("HSCA"). *7 Del. C. §§9100 et seq.* The Proposed Plan summarizes the Department's thorough investigation of the Site for hazardous substances. The Proposed Plan also carefully considers the potential risks from hazardous substances at the Site. Finally, the Proposed Plan sets forth complete and effective remedies, including a restrictive covenant to control future land use. Once these remedies are implemented, then the Site will be safe for proposed uses.

The Site is an approximate fifteen acre area consisting of five recently created parcels within the City of Wilmington's Riverfront development area. The Site was included in HSCA's Brownfield Program, and the Department's Voluntary Cleanup Program ("VCP"), which encourages the environmental cleanup of contaminated properties so that they may benefit Delaware's economy, public health and environment.

The Department provided public notice of the Proposed Plan to allow the public the opportunity to submit comments in writing and at a March 28, 2006, public hearing. The Department's presiding Hearing Officer prepared a Report of the Hearing Officer, dated March 29, 2006 ("Report"), which indicates that the Department received no public comments on the Proposed Plan. The Report recommends expedited approval of the Proposed Plan as a Final Plan without any modification.

I adopt the Report and the remedial decision record, and approve the Proposed Plan as the Final Plan without any modification. I find that the Proposed Plan is adequately supported, is not arbitrary or capricious, and should be adopted as the Final Plan. Approval of the Proposed Plan as a Final Plan is consistent with HSCA and the Department's regulations. The Final Plan, once implemented, will clean the Site adequately and protect public health and the environment consistent with HSCA and the Department's regulations. The remediation measures will allow the Site to become an important part of the City of Wilmington's waterfront redevelopment.

In conclusion, the following findings and conclusions are entered as a final Order of the Department:

1. The Department has jurisdiction to approve the Site's Final Plan under HSCA;

2. The Department's experts thoroughly investigated the Site, carefully considered the potential risks from the Site's hazardous substances, and fully addressed the potential risks through remediation measures that will ensure the Site is safe for its intended uses;

3. The Department provided adequate public notice of the Site's Proposed Plan, and afforded the public with an opportunity to comment on it. The Department's Hearing Officer prepared a Report, which states that the Department received no public comments. The Report recommends expedited approval of the Proposed Plan as a Final Plan without modification because it complies with HSCA and the Department's regulations and it will enable the Site to be used without harmful exposure to any hazardous substances;

4. The Department hereby adopts the Report, and approves the Proposed Plan as a Final Plan based upon finding that it is well supported by the Department's experts' thorough investigation of the Site, their careful evaluation of the Site's risks, and their proper selection of remediation measures. These measures, once implemented, will ensure that the Site will protect the public and the environment from any harmful exposure to any hazardous substances;

5. The Department's authorized official should issue the Final Plan consistent with this Order, provide public legal notice of this Order, and serve this Order on the persons who attended the public hearing and any other persons, as determined by the Department.

s/John A. Hughes

John A. Hughes
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable John A. Hughes
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Proposed Plan of Remedial Action for the Justison Landing Development
Project in the City of Wilmington.

DATE: March 29, 2006

I. BACKGROUND

On March 28, 2006, the Department of Natural Resource and Environmental Control ("Department") held a public hearing in Wilmington, New Castle County in order to consider public comments on the Department's March 1, 2006, Proposed Plan of Remedial Action ("Proposed Plan"). The Proposed Plan is for the Justison Landing Development Project ("Site"), which consists of approximately 15 acres in the City of Wilmington generally between the Christina River and the 300 to 400 block of Madison Street.

The Department's Site Investigation and Restoration Branch ("SIRB") within the Division of Air and Waste Management ("DAWM") prepared the Proposed Plan pursuant to the *Delaware Hazardous Substance Cleanup Act, 7 Del. C. §§9101 et seq.* ("HSCA"), *Delaware Regulations Governing Hazardous Substance Cleanup* ("Regulations"), and the Department's guidelines, procedures and policies under its Voluntary Cleanup Program authorized by HSCA.

The Department's Voluntary Cleanup Program enables the voluntary investigation and remediation of a property that may be contaminated by hazardous

substances. Under the Voluntary Cleanup Program and Subsection 13.3 of the Regulations, the Department entered into three agreements for the Site.

In July 1999, the Department entered into an agreement with the City of Wilmington, Bethlehem Steel Corporation and Delmarva Power & Light Company for two tax parcels, together consisting of 9.04 acres located at 300 South Madison Street. These parcels are owned by the City of Wilmington and are known as the 'Wilmington Public Works Yard,' which SIRB identified as Project No. DE-1090.

On January 28, 2006, the Department entered into an agreement with the Delaware Department of Transportation ("Del DoT") for a 4 acre property at 400 S. Madison Street, and also referred to as "Parcel C (former Delaware Transit Corporation)," which SIRB identified as DNREC Project No. DE-1040.

Finally, the Department entered into another January 28, 2006, agreement with the Del DoT for a 1.27 acre parcel at 350 S. Madison Street, and also referred to as "Parcel D (Brandywine Counseling)," which SIRB included as DNREC Project No. DE-1335.

These three agreements required the submission of Work Plans for the Department's approval that required a Remedial Investigation ("RI") and a Feasibility Study ("FS") pursuant to Subsections 8.3 and 8.4 of the Regulations. SIRB also designated the combined Site as DNREC Project DE-1377.

The RI and FS for the Site were prepared and submitted to the Department. These show that the Site was the subject of extensive environmental sampling, testing and analysis of the potential risks from the hazardous substances found at the Site. Most of the documents in the remedial decision record are the supporting RI and FS for the Site,

as shown by the documents described in Appendix A of this Report. The Department also approved pursuant to Subsection 8.2 of the Regulations certain interim remedial actions at the Site, which resulted in the removal of certain hazardous substances that were discovered.

Upon review of the Site's RI and FS, the Department developed Remedial Action Objectives pursuant to Subsection 8.4 of the Regulations, and prepared the Proposed Plan pursuant to Subsection 8.7 of the Regulations. On March 1, 2006, DAWM Director James Werner approved the Proposed Plan that selected the following remedial actions:

- removal of hotspots with elevated levels of organic contaminants;
- redevelopment approach that includes worker safety monitoring and management during construction;
- safe management and disposal of contaminated materials encountered during construction;
- placement of a barrier cap across the surface of the site;
- installation of vapor barriers beneath occupied buildings;
- groundwater monitoring; and
- institutional controls, including an environmental covenant that is consistent with Delaware's Uniform Environmental Covenants Act (UECA) will be placed on the Site to prohibit unauthorized digging and limit the Site to commercial/industrial use.

On March 6, 2006, the Department provided public notice of the Proposed Plan through publication, and scheduled a public hearing for March 28, 2006 in order to provide the public with the opportunity to comment on the Proposed Plan before the Department made any final decision on it. Several members of the public attended the hearing, but they did not present any comments on the Proposed Plan. In addition, the

Department did not receive any written comments within the public comment period that began with the March 6, 2006, public notice and ended March 28, 2006, with the close of the public hearing record.

II. SUMMARY OF THE REMEDIAL DECISION RECORD

I find that the Department properly developed a remedial decision record, which includes the public hearing record's verbatim transcript and documents, marked as Exhibits ("Ex."). In addition, the record includes the three Voluntary Cleanup Agreements, and the Department's voluminous supporting documents for the Proposed Plan, as shown by the list of documents included as Appendix B hereto. Together, these documents show the extensive study of the Site in order to determine the types of hazardous substances present and their locations. The record also includes the interim actions already approved and undertaken, which have resulted in the remediation of some hazardous substances by their removal from the Site. The record includes the RI and FS for the Site and supporting information.

III. DISCUSSION AND REASONS

Based upon my review of the remedial decision record, I find that the Department's experts developed the Proposed Plan after conducting a thorough investigation of the Site for all hazardous substances. The Site investigation found hazardous substances, but the Proposed Plan indicates that the Department carefully assessed the hazardous substances' potential risks, including possible risks from exposure through the soil, water and air. The Proposed Plan also shows that the Department's experts then selected from among several alternatives a proposed package of remedial actions that will protect in a cost effective manner the public health and the environment

from the potential risks from exposure to hazardous substances. The proposed remedial actions include removing hazardous substances and otherwise protecting the public and the environment from any harmful potential exposure to any hazardous substances.

I find that the Department's Proposed Plan is based upon a complete remedial decision record that shows a sound and reasoned process that arrives at the selection of proposed remedial actions that will protect public health and the environment from the potential risks from exposure to hazardous substances. The Proposed Plan is supported by expert scientific analysis, and follows the same procedure used for other HSCA proposed plans. Consequently, I find that the remedial record supports approving the Proposed Plan as a Final Plan of Remedial Action for the Site.

IV. RECOMMENDED FINDINGS AND CONCLUSIONS

I recommend that the Secretary enter an order with the following findings and conclusions:

1. The Department has jurisdiction under its statutory authority to make a determination on the Proposed Plan;
2. The Department provided the public with the required legal notice of the Proposed Plan, and afforded the public with an adequate opportunity to comment on it during the public comment period that commenced March 6, 2006, and ended March 28, 2006;
3. The Department did not receive any public comments on the Proposed Plan, which was based upon a recommended remedial decision record that provides reasons and technical and scientific supports for the Proposed Plan;

4. The Department's technical experts supervised a thorough investigation of the Site, carefully considered the results of the investigation, and selected remedial actions in the Proposed Plan that are consistent with HSCA, the Department's Regulations and the Department's policies;

5. The Proposed Plan is based on a record that shows a reasoned and deliberate decision-making process, including the thorough investigation of the Site, the careful analysis of the data from the Site's investigation, and the selection of proposed remedial actions that will eliminate any potential risk of harmful exposure to the Site's hazardous substances;

6 The Department should approve the Proposed Plan as the Final Plan as quickly as possible to allow the Site's remediation to begin as soon as possible, which will enable the Site to be redeveloped consistent with HSCA's purposes;

7. The Department's authorized official should issue the Proposed Plan as the Final Plan of Remedial Action, as approved by this Order, and copies of this Order and the Final Plan shall be provided to the persons who attended the public hearing and any other persons the Department determines should receive notice of the Department's final decision on the Proposed Plan.

[s/Robert P. Haynes](#)

Robert P. Haynes, Esquire
Hearing Officer

Appendix A

**Proposed Plan of Remedial Action
Justison Landing Site SIRB Project DE-1377
Wilmington, Delaware
Remedial Decision Record Document Supplement
to the Public Hearing Record**

- 1) November 2004, Final Plan of Interim Response Actions Christina Riverfront Redevelopment Parcels Projects
- 2) November 3, 2004, Advertisement of the Final Plan of Interim Response Actions Christina Riverfront Redevelopment Parcels Projects
- 3) January 2005, Volume 1, 2, 3 of Remedial Investigation Report for Wilmington Public Works Yard
- 4) March 4, 2005, Letter addressing DNREC comments to the January 2005 RI report
- 5) April 2005, Supplemental Remedial Investigation Report Wilmington Public Works Yard and January 3, 2006, Response to Comments.
- 6) May 2005, Report on removal of (1) 2,500 gallon UST and (10) hydraulic cylinder lifts.
- 7) June 2, 2005, Interim Response Action Report for Operable Unit 1 for the Wilmington Public Works Yard
- 8) August 2005, Report of Supplemental Soil Investigations along South Madison Street
- 9) September 2005, Supplemental Groundwater Report for Wilmington Public Works Yard and October 2005, Response to Comments.
- 10) October 25, 2005, Wilmington Public Works Yard Operable Unit 2 (OU-2) (DE-1333) Focused Feasibility Study Report
- 11) November 2005, Triangle Parcel Additional Delineation Summary Report
- 12) Revised December 2005, Volume 1 and 2 Remedial Investigation Report for Redevelopment Parcels C&D
- 13) December 2005, Additional lift sampling investigation for Wilmington Public Works Yard
- 14) February 2006, Interim Action Completion Report for Operable Unit 2 of the Wilmington Public Works Yard
- 15) February 2006, Contaminated Material and Water Management Work Plan (CMWMWP).
- 16) February 2006, CMWMWP Approval letter.
- 17) February 28, 2006, Parcel C&D Focused Feasibility Study
- 18) March 1, 2006, Volume 1 -Feasibility Study for the Public Works Yard (DE-1090)
- 19) March 1, 2006, Volume 2 of the Feasibility Study for the Public Works Yard (DE-1090)